

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 404

Introduced by Assembly Member Eng

February 23, 2009

An act to amend ~~Section~~ *Sections 19565 and 23701d* of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 404, as amended, Eng. ~~Taxation: tax-exempt~~ *Income taxes: exemption: charitable organizations: administration.*

The Corporation Tax Law, in modified conformity with federal income tax laws, exempts various types of organizations from state income taxes imposed by that law. Existing law allows organizations that have obtained a ruling or determination from the Internal Revenue Code that it is exempt from federal income taxes as an organization described in Section 501(c)(3) of the Internal Revenue Code to obtain exemption from state income taxes by submitting to the Franchise Tax Board a copy of the notification issued by the Internal Revenue Service approving the organization's tax-exempt status, as specified.

This bill would additionally, *if the central organization and all of its subordinates are organizations described in Section 501(c)(3)*, exempt a subordinate organization that is included in a federal group exemption letter, provided the organization submits to the board a copy of the group exemption letter issued by the Internal Revenue Service and substantiation that it is included in the federal group exemption letter as a subordinate organization. This bill would require the board to issue an acknowledgment of an organization's exemption from state income taxes, as provided. This bill would also, if the board suspends or revokes

the exemption of an organization, provide that the exempt status will not be reinstated until the organization applies to the Franchise Tax Board for exemption, and the board issues a determination exempting the organization from state income taxes, as provided.

This bill would also require documents submitted to the Franchise Tax Board to verify the exemption, and the acknowledgment letter or other document issued by the Franchise Tax Board, to be open to public inspection, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19565 of the Revenue and Taxation Code
2 is amended to read:
3 19565. (a) (1) If an organization is exempt from taxation
4 under Section 23701 for any taxable year, the application filed by
5 the organization with respect to which the Franchise Tax Board
6 made its determination that the organization was entitled to
7 exemption under Section 23701, together with any papers
8 submitted in support of the application, and any letter or other
9 document issued by the Franchise Tax Board, with respect to the
10 application, shall be open to public inspection. ~~Any inspection~~
11 ~~under this subdivision may be made at the times, and in the manner,~~
12 ~~as the Franchise Tax Board shall by regulations prescribe.~~ After
13 the application of any organization has been opened to public
14 inspection under this subdivision, the Franchise Tax Board shall,
15 on the request of any person with respect to the organization,
16 furnish a statement indicating the section which it has been
17 determined describes the organization.
18 (2) *If an organization is exempt from taxation for any taxable*
19 *year pursuant to subdivision (c) of Section 23701d, any documents*
20 *submitted to the Franchise Tax Board to verify the organization's*
21 *federal exemption under Section 501(c)(3) of the Internal Revenue*
22 *Code, including any copy of the notification issued by the Internal*
23 *Revenue Service approving the organization's tax-exempt status*
24 *pursuant to Section 501(c)(3) of the Internal Revenue Code which*
25 *is submitted by the organization to the Franchise Tax Board, and*
26 *the acknowledgment letter or other document issued by the*
27 *Franchise Tax Board, shall be open to public inspection.*

1 (3) *Any inspection under paragraph (1) or (2) of this subdivision*
2 *may be made at times, and in the manner, as the Franchise Tax*
3 *Board shall by regulation prescribe.*

4 (b) Upon request of the organization submitting any supporting
5 papers described in subdivision (a), the Franchise Tax Board shall
6 withhold from public inspection any information contained therein
7 which it determines relates to any trade secret, patent, process,
8 style of work, or apparatus, of the organization, if it determines
9 that public disclosure of the information would adversely affect
10 the organization. The Franchise Tax Board shall withhold from
11 public inspection any information contained in supporting papers
12 described in subdivision (a) the public disclosure of which it
13 determines would adversely affect the national defense.

14 (c) The Franchise Tax Board may impose a reasonable charge
15 for supplying any information the disclosure of which is permitted
16 under this section.

17 SEC. 2. *Section 23701d of the Revenue and Taxation Code is*
18 *amended to read:*

19 23701d. (a) A corporation, community chest or trust, organized
20 and operated exclusively for religious, charitable, scientific, testing
21 for public safety, literary, or educational purposes, or to foster
22 national or international amateur sports competition (but only if
23 no part of its activities involved the provision of athletic facilities
24 or equipment), or for the prevention of cruelty to children or
25 animals, no part of the net earnings of which inures to the benefit
26 of any private shareholder or individual, no substantial part of the
27 activities of which is carrying on propaganda or otherwise
28 attempting to influence legislation, (except as otherwise provided
29 in Section 23704.5), and which does not participate in, or intervene
30 in (including the publishing or distribution of statements), any
31 political campaign on behalf of (or in opposition to) any candidate
32 for public office. An organization is not organized exclusively for
33 exempt purposes listed above unless its assets are irrevocably
34 dedicated to one or more purposes listed in this section. Dedication
35 of assets requires that in the event of dissolution of an organization
36 or the impossibility of performing the specific organizational
37 purposes the assets would continue to be devoted to exempt
38 purposes. Assets shall be deemed irrevocably dedicated to exempt
39 purposes if the articles of organization provide that upon
40 dissolution the assets will be distributed to an organization which

1 is exempt under this section or Section 501(c)(3) of the Internal
2 Revenue Code or to the federal government, or to a state or local
3 government for public purposes; or by a provision in the articles
4 of organization, satisfactory to the Franchise Tax Board; that the
5 property will be distributed in trust for exempt purposes; or by
6 establishing that the assets are irrevocably dedicated to exempt
7 purposes by operation of law. The irrevocable dedication
8 requirement shall not be a sole basis for revocation of an exempt
9 determination made by the Franchise Tax Board prior to the
10 effective date of this amendment.

11 (b) (1) In the case of a qualified amateur sports organization—

12 (A) The requirement of subdivision (a) that no part of its
13 activities involves the provision of athletic facilities or equipment
14 shall not apply.

15 (B) That organization shall not fail to meet the requirements of
16 subdivision (a) merely because its membership is local or regional
17 in nature.

18 (2) For purposes of this subdivision, “qualified amateur sports
19 organization” means any organization organized and operated
20 exclusively to foster national or international amateur sports
21 competition if that organization is also organized and operated
22 primarily to conduct national or international competition in sports
23 or to support and develop amateur athletes for national or
24 international competition in sports.

25 (c) (1) Notwithstanding subdivisions (a), (b), and (c) of Section
26 23701, an organization organized and operated for nonprofit
27 purposes in accordance with this section shall be exempt from
28 taxes imposed by this part, except as provided in this article or in
29 Article 2 (commencing with Section 23731), upon its submission
30 to the Franchise Tax Board of *a one of the following*:

31 (A) A copy of the ~~notification determination letter or ruling~~
32 issued by the Internal Revenue Service ~~approving~~ *recognizing* the
33 organization’s ~~tax-exempt status pursuant to exemption from~~
34 *federal income tax under Section 501(a) of the Internal Revenue*
35 *Code, as an organization described in* Section 501(c)(3) of the
36 Internal Revenue Code. ~~The effective date of an organization’s~~
37 ~~tax-exempt status for state income tax purposes pursuant to this~~
38 ~~subdivision shall be no later than the effective date of the~~
39 ~~organization’s tax-exempt status, under Section 501(c)(3) of the~~
40 Internal Revenue Code, for federal income tax purposes.

1 (B) A copy of the group exemption letter issued by the Internal
2 Revenue Service that states that both the central organization and
3 all of its subordinates are tax-exempt under Section 501(c)(3) of
4 the Internal Revenue Code and substantiation that the organization
5 is included in the federal group exemption letter as a subordinate
6 organization.

7 (2) Upon receipt of the documents required in subparagraph
8 (A) or (B) of paragraph (1), the Franchise Tax Board shall issue
9 an acknowledgment that the organization is exempt from taxes
10 imposed by this part, except as provided in this article or in Article
11 2 (commencing with Section 23731). The acknowledgment may
12 refer to the organization's recognition by the Internal Revenue
13 Service of exemption from federal income tax as an organization
14 described in Section 501(c)(3) of the Internal Revenue Code and,
15 if applicable, the organization's subordinate organization status
16 under a federal group exemption letter. The effective date of an
17 organization's exemption from state income tax pursuant to this
18 subdivision shall be no later than the effective date of the
19 organization's recognition of exemption from federal income tax
20 as an organization described in Section 501(c)(3) of the Internal
21 Revenue Code, or its status as a subordinate organization under
22 a federal group exemption letter, as applicable.

23 ~~(2)~~

24 (3) If, for federal income tax purposes, an organization's
25 ~~tax-exempt status under exemption from tax as an organization~~
26 described in Section 501(c)(3) of the Internal Revenue Code is
27 suspended or revoked, the organization shall notify the Franchise
28 Tax Board of the suspension or revocation, in the form and manner
29 prescribed by the Franchise Tax Board. Upon notification, the
30 board shall suspend or revoke, whichever is applicable, for state
31 income tax purposes, ~~an the organization's tax-exempt status~~
32 ~~granted pursuant to exemption under paragraph (1) of this~~
33 subdivision.

34 ~~(3)~~

35 (4) This subdivision shall not be construed to prevent the
36 Franchise Tax Board from revoking the exemption of an
37 organization that is not organized or operated in accordance with
38 this chapter or Section 501(c)(3) of the Internal Revenue Code.

39 (5) If the Franchise Tax Board suspends or revokes the
40 exemption of an organization pursuant to paragraph (3) or (4),

1 *the exemption shall be reinstated only upon compliance with*
2 *Section 23701, regardless of whether the organization can establish*
3 *exemption under paragraph (1).*

4 (d) The Franchise Tax Board may prescribe rules and regulations
5 to implement this section.

6 ~~SECTION 1. Section 23701d of the Revenue and Taxation~~
7 ~~Code is amended to read:~~

8 ~~23701d. (a) A corporation, community chest or trust, organized~~
9 ~~and operated exclusively for religious, charitable, scientific, testing~~
10 ~~for public safety, literary, or educational purposes, or to foster~~
11 ~~national or international amateur sports competition (but only if~~
12 ~~no part of its activities involved the provision of athletic facilities~~
13 ~~or equipment), or for the prevention of cruelty to children or~~
14 ~~animals, no part of the net earnings of which inures to the benefit~~
15 ~~of any private shareholder or individual, no substantial part of the~~
16 ~~activities of which is carrying on propaganda or otherwise~~
17 ~~attempting to influence legislation, (except as otherwise provided~~
18 ~~in Section 23704.5), and which does not participate in, or intervene~~
19 ~~in (including the publishing or distribution of statements), any~~
20 ~~political campaign on behalf of (or in opposition to) any candidate~~
21 ~~for public office. An organization is not organized exclusively for~~
22 ~~exempt purposes listed above unless its assets are irrevocably~~
23 ~~dedicated to one or more purposes listed in this section. Dedication~~
24 ~~of assets requires that in the event of dissolution of an organization~~
25 ~~or the impossibility of performing the specific organizational~~
26 ~~purposes the assets would continue to be devoted to exempt~~
27 ~~purposes. Assets shall be deemed irrevocably dedicated to exempt~~
28 ~~purposes if the articles of organization provide that upon~~
29 ~~dissolution the assets will be distributed to an organization which~~
30 ~~is exempt under this section or Section 501(c)(3) of the Internal~~
31 ~~Revenue Code or to the federal government, or to a state or local~~
32 ~~government for public purposes; or by a provision in the articles~~
33 ~~of organization, satisfactory to the Franchise Tax Board; that the~~
34 ~~property will be distributed in trust for exempt purposes; or by~~
35 ~~establishing that the assets are irrevocably dedicated to exempt~~
36 ~~purposes by operation of law. The irrevocable dedication~~
37 ~~requirement shall not be a sole basis for revocation of an exempt~~
38 ~~determination made by the Franchise Tax Board prior to the~~
39 ~~effective date of this amendment.~~

40 (b) (1) In the case of a qualified amateur sports organization—

1 ~~(A) The requirement of subdivision (a) that no part of its~~
2 ~~activities involves the provision of athletic facilities or equipment~~
3 ~~shall not apply.~~

4 ~~(B) That organization shall not fail to meet the requirements of~~
5 ~~subdivision (a) merely because its membership is local or regional~~
6 ~~in nature.~~

7 ~~(2) For purposes of this subdivision, “qualified amateur sports~~
8 ~~organization” means any organization organized and operated~~
9 ~~exclusively to foster national or international amateur sports~~
10 ~~competition if that organization is also organized and operated~~
11 ~~primarily to conduct national or international competition in sports~~
12 ~~or to support and develop amateur athletes for national or~~
13 ~~international competition in sports.~~

14 ~~(c) (1) Notwithstanding subdivisions (a), (b), and (c) of Section~~
15 ~~23701, an organization organized and operated for nonprofit~~
16 ~~purposes in accordance with this section shall be exempt from~~
17 ~~taxes imposed by this part, except as provided in this article or in~~
18 ~~Article 2 (commencing with Section 23731), upon its submission~~
19 ~~to the Franchise Tax Board of one of the following:~~

20 ~~(A) A copy of the determination letter or ruling issued by the~~
21 ~~Internal Revenue Service recognizing the organization’s exemption~~
22 ~~from federal income tax under Section 501(a) of the Internal~~
23 ~~Revenue Code, as an organization described in Section 501(c)(3)~~
24 ~~of the Internal Revenue Code.~~

25 ~~(B) A copy of the group exemption letter issued by the Internal~~
26 ~~Revenue Service and substantiation that the organization is~~
27 ~~included in the federal group exemption letter as a subordinate~~
28 ~~organization.~~

29 ~~(2) Upon receipt of the documents required in subparagraph~~
30 ~~(A) or (B) of paragraph (1), the Franchise Tax Board shall issue~~
31 ~~an acknowledgment that the organization is exempt from taxes~~
32 ~~imposed by this part, except as provided in this article or in Article~~
33 ~~2 (commencing with Section 23731). The acknowledgment may~~
34 ~~refer to the organization’s recognition by the Internal Revenue~~
35 ~~Service of exemption from federal income tax as an organization~~
36 ~~described in Section 501(c)(3) of the Internal Revenue Code and,~~
37 ~~if applicable, the organization’s subordinate organization status~~
38 ~~under a federal group exemption letter. The effective date of an~~
39 ~~organization’s exemption from state income tax pursuant to this~~
40 ~~subdivision shall be no later than the effective date of the~~

1 organization's recognition of exemption from federal income tax
2 as an organization described in Section 501(c)(3) of the Internal
3 Revenue Code, or its status as a subordinate organization under a
4 federal group exemption letter, as applicable.

5 (3) If, for federal income tax purposes, an organization's
6 exemption from tax as an organization described in Section
7 501(c)(3) of the Internal Revenue Code is suspended or revoked,
8 the organization shall notify the Franchise Tax Board of the
9 suspension or revocation, in the form and manner prescribed by
10 the Franchise Tax Board. Upon notification, the board shall
11 suspend or revoke, whichever is applicable, for state income tax
12 purposes, the organization's exemption under paragraph (1) of this
13 subdivision.

14 (4) This subdivision shall not be construed to prevent the
15 Franchise Tax Board from revoking the exemption of an
16 organization that is not organized or operated in accordance with
17 this chapter or Section 501(c)(3) of the Internal Revenue Code.

18 (5) If the Franchise Tax Board suspends or revokes the
19 exemption of an organization pursuant to paragraph (3) or (4), the
20 exemption shall be reinstated only upon compliance with Section
21 23701, regardless of whether the organization can establish
22 exemption under paragraph (1).

23 (d) The Franchise Tax Board may prescribe rules and regulations
24 to implement this section.